

No. 12032

United States
Court of Appeals
for the Ninth Circuit

BAXTER CREEK IRRIGATION DISTRICT
and W. COBURN COOK, Trustee for the Cre-
ditors of Baxter Creek Irrigation District,
Appellants,

vs.

STATE OF CALIFORNIA, FISH AND GAME
COMMISSION OF THE STATE OF CALI-
FORNIA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

OCT 16 1948

PAUL P. O'BRIEN,

CLERK

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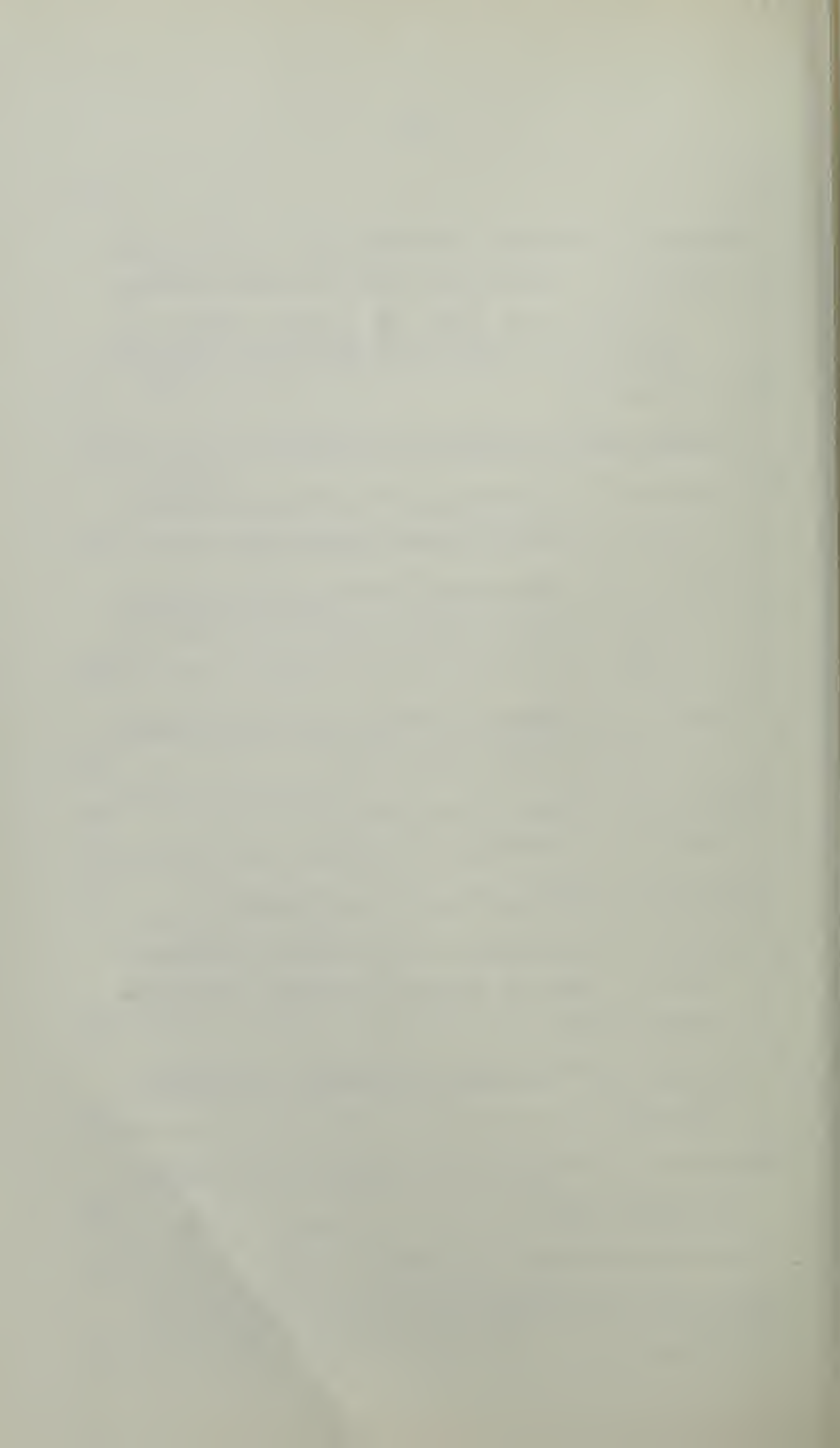
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellants:

W. COBURN COOK, Esq.,
Berg Bldg., Turlock, Calif.

Attorney for Appellee:

THOMAS W. MARTIN, Esq.,
Oroville, Calif.

In the United States District Court for the Northern District of California, Northern Division.

No. 10750

In the Matter of the BAXTER CREEK
IRRIGATION DISTRICT,

Bankrupt.

PETITION FOR ORDER TO SHOW CAUSE

Comes now the State of California and files this Petition for an Order to Show Cause why that certain land hereinafter more particularly described in Exhibit A attached hereto should not be excluded from the operation of the Plan of Composition as set forth in the Interlocutory Decree entered herein on January 3rd, 1946, and why any assessments levied thereon should not be declared null and void.

In support of this Petition the State of California shows:

1. That on January 3rd, 1946 an Interlocutory Decree was made and entered in the above-entitled court approving a Plan of Composition proposed by the Baxter Creek Irrigation District which provided that the lands described in "Exhibit B" attached thereto should be subject to said Plan of Composition and could be released therefrom only upon payment of an assessment [1*] in the amount set forth in said "Exhibit B."

2. That said "Exhibit B" of said Plan of Composition which was approved by the Interlocutory

* Page numbering appearing at foot of page of original certified Transcript of Record.

Decree of January 3rd, 1946, provided in part as follows:

Plat No. 7; Owner, Fish and Game Commission, State of California; All M.D.B.&M., description: NE $\frac{1}{4}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 4, Twp. 28 N., Range 14 E.; 280 acres; Amount, \$860.00; Exp. Asses., \$25.28; Total Amount, \$885.28.

3. That as set forth in said "Exhibit B", said land above described was owned by the State of California at the time of said Plan of Composition and Interlocutory Decree of January 3rd, 1946; that said land was a portion of a larger parcel of land hereinafter more particularly described in Exhibit "A" attached hereto and was conveyed to the State of California by Clarence E. Dakin, Elsie M. Dakin, Walter J. Dakin and Gertrude A. Dakin by Deed dated June 13, 1944; that said Deed of June 13, 1944 was approved and accepted by the State of California by a Certificate of Approval signed by James S. Dean, Director of Finance, on August 28, 1944.

4. That the above described land was not subject to said Plan of Composition or any assessment by said Baxter Creek Irrigation District because owned by the State of California; that insofar as said order of January 3rd, 1946 sought to subject land of the State of California to assessment, it was beyond and in excess of the jurisdiction of the court; that any assessment levied upon said land is null and void.

5. That the inclusion of said land in the land subject of said Plan of Composition and Interlocutory Decree of January 3rd, 1946 and the levying

of an assessment upon said land places a cloud upon the title of said land owned by the State of California.

6. That said Interlocutory Decree of January 3rd, 1946 [2] provides that the present or future owners may seek relief from errors made in setting forth the land subject of the Plan of Composition in "Exhibit B" at any time prior to April 24, 1947.

Wherefore Petitioner prays:

First: That an Order To Show Cause be issued directing the Baxter Creek Irrigation District and W. Coburn Cook, Trustee for the creditors under said Plan of Composition, to be and appear before the above entitled Court, in the Post Office Building, Sacramento, California, then and there to show cause, if any, why that certain land more particularly described in Exhibit A attached hereto should not be excluded from the operation of the Plan of Composition as set forth in the Interlocutory Decree entered herein on January 3rd, 1946, and why any assessment levied thereon should not be declared null and void.

Second: For such other relief as the Court deems just and meet in the premises.

Dated: January 10th, 1946.

STATE OF CALIFORNIA,

By /s/ E. G. BENARD,

Deputy Attorney General,
and

/s/ THOMAS W. MARTIN,

Attorneys for Petitioner. [3]

EXHIBIT A

All that real property situated in the County of Lassen, State of California, and particularly described as follows:

The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, and the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 2; the N $\frac{1}{2}$ of Section 11; the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the diagonal NW $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12; the NE $\frac{1}{4}$, and N $\frac{1}{2}$ of the SE $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4; all in Twp. 28 North, Range 14 East, M.D.B.&M.

POINTS AND AUTHORITIES IN SUPPORT OF PETITION

Land of the State of California is exempt from taxation:

California Constitution, Sec. 1, Art. XIII;

California Revenue and Taxation Code, Sec. 202.

The principles which make property of the State nontaxable under general statutory provisions also preclude the imposition of special assessments:

Inglewood v. County of Los Angeles, 207 Cal. 697, 702; Opinion of the Attorney General of California, No. NS3366, NS2051 and NS2424.

[Endorsed]: Filed Jan. 13, 1947. [5]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF PETITION
FOR ORDER TO SHOW CAUSE

State of California,
City and County of San Francisco—ss.

Thomas W. Martin, being first duly sworn, deposes and says:

That on June 13, 1944, Clarence E. Dakin, Elsie M. Dakin, Walter J. Dakin and Gertrude A. Dakin executed a deed granting to the State of California all that real property situate in the County of Lassen, State of California, and particularly described as follows:

The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, and the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 2; the N $\frac{1}{2}$ of Section 11; the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the diagonal NW $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12; the NE $\frac{1}{4}$, and N $\frac{1}{2}$ of the SE $\frac{1}{4}$, and the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4; all in Twp. 28 North, Range 14 East, M.D.B.&M.

That said deed was approved and accepted by the State of California by a Certificate of Approval signed by [6] James S. Dean, Director of Finance, on August 28, 1944.

That the State of California was the owner of said land above described at the time of the making and entering of the Interlocutory Decree of January 3rd, 1946, in the above-entitled proceeding and still is the owner of said land.

That the inclusion of said land in the Plan of

Composition approved and confirmed by said Interlocutory Decree of January 3rd, 1946, and the levying of assessments on said land has placed a cloud in the title of the State of California.

/s/ THOMAS W. MARTIN.

Subscribed and sworn to before me this 10th day of January, 1947.

(Seal) /s/ LOUIS V. VASQUEZ,
Notary Public in and for the City and County of
San Francisco.

My commission expires: December 4, 1947.

[Endorsed]: Filed Jan. 13, 1947. [7]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

To: Baxter Creek Irrigation District and W. Coburn Cook, Trustee for the creditors under the Plan of Composition approved by Interlocutory Decree made and filed herein on January 3rd, 1946, you are hereby directed to be and appear before the above entitled Court, in the Post Office Building, Sacramento, California on Monday, the 20th day of January, 1947, at the hour of 10 o'clock a.m. of said day, then and there to show cause, if any you have, why that certain land described in Exhibit "A" attached hereto should not be excluded from the operation of the Plan of Composition as set forth in the Interlocutory Decree en-

tered herein on January 3rd, 1946, and why any assessment levied thereon should not be declared null and void.

Dated: January 13th, 1947.

/s/ ROGER T. FOLEY,
Judge, United States District
Court.

[Endorsed]: Filed Jan. 13, 1947. [8]

[Title of District Court and Cause.]

AFFIDAVIT OF W. COBURN COOK, TRUS-
TEE, SHOWING CAUSE

Comes now W. Coburn Cook, Trustee herein, and shows cause why an order should not be made herein excluding from the operation of the plan of composition set forth in the interlocutory decree entered herein January 3, 1946, the lands described in these proceedings and claimed by the Fish and Game Commission of the State of California in their affidavit herein for an order to show cause, and why the assessments levied thereupon should not be declared null and void, and for that purpose makes the following affidavit:

State of California,
County of Stanislaus—ss.

W. Coburn Cook, being duly sworn, says:

That he is the Trustee herein appointed by this Court and is acting as such.

1. That this Court has made no assessment upon

the lands claimed by the Fish and Game Commission, and there is none which can be set aside by this court.

2. That the word "amount" referred to in paragraph 2 of said petition does not refer to the amount of assessment [9] but to a contractual right to have the said lands released from the obligation represented by previous assessment.

3. Affiant has no information as to whether it is true that the State of California does own said land or how it acquired title, and therefore basing his denial upon such want of information, denies that the State of California owns said lands and denies that they were acquired on August 28, 1944.

4. Denies that said land was not subject to the plan of composition or any assessment by Baxter Creek Irrigation District for the reason stated in paragraph 4 of the petition or for any other reason. Denies that the order made by this Court on January 3, 1946 was beyond or in excess of the jurisdiction of the Court. Denies that any assessment levied upon said lands is null and void.

5. Admits that said decree of January 3, 1946 permits owners of lands to seek certain relief, but denies that the relief sought herein is permissible under said clause.

6. Asserts that the lands described herein are subject to assessment for the debts of the Baxter Creek Irrigation District.

7. Has no information as to whether Clarence E. Dakin, Elsie M. Dakin, Walter J. Dakin and Gertrude A. Dakin executed a deed to the State of

California on June 13, 1944, granting to the State of California the following described lands:

NE $\frac{1}{4}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 4, T. 28, R. 14.

That affiant has no information, knowledge or belief as to whether the matters relating to this paragraph are true, and basing his denial thereon denies each and every of said allegations, and for the same reason denies that the State of California was the owner of said lands at the time of making and entering of the interlocutory decree, and denies that it is still the owner of said land. [10]

8. Alleges that due notice was given of the proceedings herein to the Fish and Game Commission of the State of California as shown by the record herein; that they did not appear to protest or otherwise at the proceedings for settlement of the plan of composition and that the plan is res judicata as to the Fish and Game Commission of the State of California, and that the State of California is bound thereby.

9. That no assessments have been levied by this court or in these proceedings upon the lands described in the petition herein and that the questions raised relative thereto are moot questions and not subject to the jurisdiction or order of this court.

10. That the proceedings herein grant in effect an option to the State of California to relieve itself from the obligation on the bonds and warrants, but if the order herein be granted the Trustee will never

be obligated to surrender the bonds and warrants for cancellation.

11. That affiant is informed and believes and therefore alleges the fact to be that said lands were assessed by the County of Lassen for said irrigation district in the name of Dakin Brothers by proceedings commenced in 1943 in the amount of \$52,839.12.

W. COBURN COOK.

Subscribed and sworn to before me this 27th day of February, 1947.

(Seal) EMMA JANE NEARING,
Notary Public in and for the County of Stanislaus,
State of California.

Wherefore, the trustee prays that the petition of the State of California be denied.

W. COBURN COOK,
Trustee.

[Endorsed]: Filed Feb. 28, 1947. [11]

[Title of District Court and Cause.]

AGREED STATEMENT OF FACTS RE PETITION OF STATE OF CALIFORNIA FOR ORDER EXCLUDING CERTAIN LAND FROM PLAN OF COMPOSITION AND INTERLOCUTORY DECREE APPROVING SAID PLAN

It is hereby stipulated and agreed by and between The State of California, Petitioner herein, W. Coburn Cook, Trustee, and The Baxter Creek Irrigation District, that the Petition of the State of California for an Order to Show Cause and the Trustee's Return to the Order to Show Cause may be submitted to the above-entitled court upon the following agreed statement of facts.

1. The State of California acquired the land subject of the Petition by deed dated June 13, 1944. A copy of this deed is attached hereto as Exhibit "A" and incorporated herein by reference.

2. The Director of Finance consented to the execution of the deed and accepted the property on behalf of the State of California by Certificate of Approval dated August 28, 1944. A copy of this Certificate of Approval is attached hereto as Exhibit "B" and incorporated herein by reference.

3. The deed to the State of California was recorded [12] November 14, 1944 in Book 31 of the Official Records of Lassen County, page 295, and re-recorded on December 4, 1944 in Book 31 of the Official Records of Lassen County, page 334.

4. The Board of Supervisors of Lassen County

passed a resolution in September, 1943 in connection with the preparation of an assessment roll of the lands in the Baxter Creek Irrigation District and the levy of an assessment upon said lands. A copy of this resolution of the Board of Supervisors is attached hereto as Exhibit "C" and incorporated herein by reference.

5. Notice was published in the Lassen Advocate on November 18 and November 25, 1943 that the Assessment Roll of the Baxter Creek Irrigation District had been completed and that the Board of Supervisors of Lassen County would meet as a Board of Equalization on December 13, 1943 to hear requests for any change or correction in the Assessment Roll.

6. The Board of Supervisors of Lassen County met as a Board of Equalization on December 13, 1943 to hear requests for any change or correction in the Assessment Roll which had been prepared for the Baxter Creek Irrigation District.

7. Notice to landowners in the Baxter Creek Irrigation District that assessments levied were now due and payable and would become delinquent February 28, 1944 was published in the Lassen Advocate on December 30, 1943 and January 6, 1944.

8. The Assessment Roll prepared for the purpose of the Irrigation District assessment and hereinabove referred to in paragraphs 5, 6 and 7 set forth the description of the property assessed, the name of the owner and the amount of the assessment against the land. The land subject of the

Petition of the State of California was not included in the Assessment Roll. [13]

9. Notice was published in the Lassen Advocate on March 30, April 6 and April 13, 1944 that the real property described in the Assessment Roll for Baxter Creek Irrigation District, hereinabove referred to in Paragraphs 5, 6, 7 and 8, would be sold to the Irrigation District unless the assessments, penalties and costs on the property as shown on the list attached to the Notice was paid prior to April 24, 1944. The land subject to the Petition of the State of California was not described in the list of properties attached to this Notice.

10. On March 20, 1940 this court rendered a judgment in favor of the plaintiff in the case of Pueblo Trading Co., Plaintiff, vs. Baxter Creek Irrigation District, Defendant, No. 4195L, which judgment amongst other things required the Baxter Creek Irrigation District to make provision for the judgment by levying and collecting assessments against the lands in said district in the manner provided by the California Irrigation Districts Act, and that upon the failure or refusal of the district to make such provision that the Board of Supervisors and other officials of the county of Lassen make provision for the payment of the judgment in the same manner and that this court retain jurisdiction

of the cause and that the plaintiff might apply to the court for further relief.

The district had not levied any assessments against the lands of the district for payment of its bond issues or debts since 1927, and it failed to carry out the provisions of the judgment referred to herein; whereupon the plaintiff applied to this court and on July 20, 1943 was granted an order to show cause why the district and the county officials should not be punished for contempt for failure to carry out the provisions of the judgment; whereupon the county officials appeared in this court and promised the court that they would levy the assessments, not only [14] for the judgment but for all of the debts of the Baxter Creek Irrigation District, which assessments were to be levied upon all the lands subject to assessment therefor, and pursuant to said promise proceeded to make a levy upon certain lands within said district, and by their return showed that they had made an assessment, a copy of which return is hereunto annexed marked Exhibit "E"; that said assessment roll did not include the lands now owned by the State of California, and which said lands at that time and prior to their acquisition by the State of California were assessed to and stood on the rolls of the County Assessment Roll and were owned by Dakin Bros.; that other lands also were omitted from said assess-

ment roll and the said Pueblo Trading Co. on September 21, 1944 filed a notice of motion in said case for an order to compel the Board of Supervisors of Lassen County to levy an assessment upon the lands which the said plaintiff claimed were omitted from the previous assessment roll by the Board of Supervisors of Lassen County including the land subject of the Petition of the State of California.

11. Pursuant to the foregoing motion, an Order was entered in the above-mentioned case on September 26, 1944 directing the Board of Supervisors of Lassen County and other county officers to prepare a supplemental assessment roll and proceed to levy an assessment on the lands described in the Order. The land subject of the Petition of the State of California was among the lands described in this Order.

12. Notice was published in the Lassen Advocate on December 14th and 21st, 1944 that a Supplemental Assessment Roll for the Baxter Creek Irrigation District had been prepared and that the Board of Supervisors of Lassen County would meet [15] as a Board of Equalization to hear requests for changes or corrections in this Assessment Roll on January 2, 1945.

13. The Board of Supervisors met as a Board of Equalization and accepted the Supplemental Assessment Roll of the Baxter Creek Irrigation District on January 2, 1945.

14. Notice of the assessment set forth on the Supplemental Assessment Roll was published in

the Lassen Advocate on January 25, and February 1, 1945.

15. The land subject of the Petition of the State of California was described in the Supplemental Assessment Roll hereinabove referred to in Paragraphs 12, 13 and 14.

16. February 6, 1945 the Directors of the Baxter Creek Irrigation District passed a resolution providing for the levy of an assessment on certain land which had been omitted from the original Assessment Roll for the Baxter Creek Irrigation District. The land subject of the Petition of the State of California was included in the lands subject of this resolution. A copy of this resolution is attached hereto as Exhibit "D" and incorporated herein by reference.

17. Notice was published in the Lassen Advocate on April 26, May 1, and May 10, 1945 that the real property described in the Supplemental Assessment Roll would be sold to the Irrigation District unless the assessments, penalties and costs shown on the list attached to the Notice was paid prior to May 21, 1945. The land subject of the Petition of the State of California was described in the list of properties attached to this Notice.

18. The Board of Supervisors of Lassen County did not pass any resolution regarding the assessment of lands in the Baxter Creek Irrigation District besides the resolution of September, 1943, hereinabove referred to in Paragraph 4. [16]

19. The Directors of Baxter Creek Irrigation District passed no resolution in connection with the levy of an assessment upon the lands subject of the Petition of the State of California prior to February 6, 1945.

Dated: May 29th, 1947.

STATE OF CALIFORNIA,
By /s/ THOMAS W. MARTIN,
Attorney.

W. COBURN COOK,
Trustee,

By /s/ W. COBURN COOK,
Attorney.

BAXTER CREEK
IRRIGATION DISTRICT,
By /s/ FRANKLIN A. DILL,
Attorney. [17]

EXHIBIT "A"

DEED

We, Clarence E. Dakin and Elsie M. Dakin, his wife; and Walter J. Dakin and Gertrude A. Dakin, his wife, the first parties, for and in consideration of the sum of \$22.50 for each acre of a total of 980 acres to us in hand paid, receipt whereof is hereby acknowledged, hereby grant to the State of California, the second party, all that real property situate in the County of Lassen, State of California, and particularly described as follows:

The SW $\frac{1}{4}$ of the NE $\frac{1}{4}$, the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$, and the S $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 2; the N $\frac{1}{2}$ of Section 11; the NW $\frac{1}{4}$, the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$, and the diagonal NW $\frac{1}{2}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12; the NE $\frac{1}{4}$, and N $\frac{1}{2}$ of the SE $\frac{1}{4}$, and SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 4; All in Township 28 North, Range 14 East, Mt. Diablo Base and Meridian. Together with all the water rights, including flood, flowage and storage rights as defined in Judgment and Decree Number 4573 of the Superior Court of the State of California, in and for the County of Lassen, dated April 18, 1940, and thereby assigned to the above-named owners, excepting therefrom the undivided one-half interest of the above-named owners in and to Whitewater Reservoir, Dakin Reservoir and Hartson Ditch, which was conveyed by deed to Hartson and Sons a corporation. Also including that certain water right on Baxter Creek filed on by C. E. Dakin, March 2, 1899, and recorded April 3, 1899 in Book "A", Water Rights, Office of the Recorded Lassen County; all of the above-mentioned water rights being appurtenant to the above-described lands.

Reserving to the first parties the right of occupancy of the premises for a period of sixty (60) days after date of recordation hereof, and the pasture rights on both stubble and meadow until January 1, 1945; and further reserving unto said first parties and their privies the crop of grain appur-

tenant to the premises above-described at date hereof.

In witness whereof, the said first parties have executed this conveyance this 13th day of June, 1944.

/s/ CLARENCE E. DAKIN,
/s/ ELSIE M. DAKIN,
/s/ WALTER J. DAKIN,
/s/ GERTRUDE A. DAKIN.

State of California,
County of Lassen—ss.

On this 13th day of June in the year one thousand nine hundred and forty four before me, Electa Lazard, a Notary Public in and for the County of Lassen, State of California, residing therein, duly commissioned and sworn, personally appeared Clarence E. Dakin, and Elsie M. Dakin, his wife and Walter J. Dakin and Gertrude A. Dakin, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal in the County of Lassen, the day and year in this certificate first above written.

(Seal) ELECTA LAZARD,
Notary Public in and for the County of Lassen,
State of California.

My Commission Expires July 9, 1945. [18]

EXHIBIT "B"

State of California
Department of Finance
State Capitol
Sacramento, California

CERTIFICATE OF APPROVAL

The undersigned, Director of Finance of the State of California, hereby consents to the Execution of the annexed conveyance dated June 13, 1944, from Clarence E. Dakin, Elsie M. Dakin, Walter J. Dakin and Gertrude A. Dakin, to the State of California, comprising 980 acres of land in the County of Lassen, State of California, and accepts the said conveyance and the real property described therein upon behalf of the State of California.

JAMES S. DEAN,
Director of Finance,
By JAMES S. DEAN.

Dated: August 28, 1944. [19]

EXHIBIT "C"

"On motion of Supervisor Emerson, seconded by Supervisor McClelland, the following resolution is adopted:

Be it resolved by the Board of Supervisors of the County of Lassen, State of California, that

Whereas, a judgment was rendered by the District Court of the United States for the Northern District of California, Northern Division, on or about March 20th, 1940, in favor of Pueblo Trading Co., plaintiff, and against Baxter Creek Ir-

rigation District as defendant, for the sum of \$24,760.00 principal and \$10,240.79 interest, together with costs in the sum of \$12.37, with interest on said amounts from March 20th, 1940, and the sum \$8,529.00 interest appears to be due thereon, and said judgment further provided that "the defendant Baxter Creek Irrigation District make provision for the payment of said judgment by levying and collecting assessments against the lands in said irrigation district in the manner provided by "the California Irrigation District Act," and that upon the failure or refusal of the defendant Baxter Creek Irrigation District and its officers to make such provision, that the Board of Supervisors and other officers of the County of Lassen, State of California make provision for the payment of said judgment by levying and collecting assessments against the lands in said district in the manner provided by "the California Irrigation District Act"; and

Whereas, this board of supervisors was notified of the entry of said judgment and the said Baxter Creek Irrigation District and its officers have failed to make any provision whatever for the collection thereof as provided in said judgment or otherwise, and the said United States District Court recently issued an order to show cause why the officers of this county should not be punished for contempt of court for failure to make such provisions, and

Whereas, the present members of the board of directors of the said Baxter Creek Irrigation District, there not being a full board, have notified the said Board of Supervisors of Lassen County

that they do not intend to levy such assessments during the fiscal year 1943-1944.

Now, therefore, it appearing that the lands of the Baxter Creek Irrigation District subject to assessment are wholly within the County of Lassen,

Be it further resolved that the duly equalized assessments made by the County Assessor of Lassen County, California, be used as a basis of assessment for the district, and that the County assessor of said County shall forthwith prepare an assessment roll based upon the equalized assessment roll of the county eliminating improvements upon the lands in said district and shall ascertain the aggregate assessed value of the property within the Baxter Creek Irrigation District as appears from said assessment roll for the current year 1943-1944, and shall deduct 15% for anticipated delinquency as provided in Section 60 of "the California Irrigation District Act" and ascertain the net assessed valuation of the land or property in said district;

And it is hereby further determined and resolved that the sum of \$43,542.16 is sufficient and necessary to be raised by assessment to pay the said judgment with accrued interest, and that the said sum be levied upon the said lands [20] in the said Baxter Creek Irrigation District based upon said equalized net assessed value for the purpose of paying the said judgment.

And whereas, it further appears that there is outstanding and unpaid an indebtedness of \$1,062,-880.00, due upon the principal and matured interest coupons of bonds duly issued by said Baxter Creek Irrigation District and which have not been paid

and are past due, that the sum of \$1,062,880.00 is necessary to be raised for the payment thereof, and a levy therefor is hereby made upon said assessment roll and the lands therein; and

Whereas, it appears that there is no collector or treasurer of such irrigation district to perform the duties imposed by said Act, that the Tax Collector and Treasurer of the County of Lassen is hereby directed to perform the duties thereof as provided by said "California Irrigation District Act," and he shall pay the County Treasurer the amount collected therefrom and said County Treasurer shall place the same in special funds to the credit of the district for the payment of said judgment and of said bonds, and shall disburse the same to the holder of said judgment and to the holders of said bonds, all as provided in said act.

The foregoing resolution was passed by the following vote:

Ayes: Supervisors Tunison, Emerson, McClelland, Gerig and Godman.

Noes: None.

Absent: None.

Report of the Treasurer of receipts and disbursements, County Hospital, Horticultural Commissioner and Milk Inspector are presented and placed on file.

Communications are read and filed.

No further business, the Board adjourns.

Approved: PETER GERIG,
 Chairman.

Attest: Maud E. Tombs, Clerk." [21]

EXHIBIT "D"

Memorial Building
Susanville, California
February 6, 1945

The regular monthly meeting of the Baxter Creek Irrigation District directors was held on Tuesday evening, February 6, 1945 in the Memorial Building, Susanville, California.

Directors present: H. J. Clark, Fred Dieter and Carl Fox. Also present: T. S. Brown and Fern S. Ohman.

The meeting was called to order by President Clark. Minutes of the last meeting were read and approved.

Bills were presented for stenographic work in the amount of \$7.50, a bond for the treasurer in the amount of \$10.00, and a bill for rent of the Native Daughter's Hall at Standish for the meeting held October 23, 1944 in the amount of \$2.50. Motion made by Fox and seconded by Dieter that these bills be paid. Motion carried.

A resolution was read providing for the levying of the new assessment. After a thorough discussion of this resolution it was moved by Dieter and seconded by Fox that the attached resolution be adopted. Motion carried.

There being no further business the meeting adjourned.

/s/ H. J. CLARK,

President,

/s/ FERN S. OHMAN,

Secretary. [22]

Exhibit "D"—(Continued)

RESOLUTION OF THE DIRECTORS OF THE
BAXTER CREEK IRRIGATION DISTRICT

Whereas, a judgment was rendered by the District Court of the United States for the Northern District of California, Northern Division, on or about March 20th, 1940, in favor of Pueblo Trading Co., plaintiff, and against Baxter Creek Irrigation District as defendant, in Case No. 4195L, for the sum of \$24,760.00 principal and \$10,240.79 interest, together with costs in the sum of \$12.37, with interest on said amounts from March 20th, 1940. and the sum of \$12,009.31 with interest appears to be due thereon, and said judgment further provided that the defendant Baxter Creek Irrigation District make provision for the payment of said judgment by levying and collecting assessments against the lands in said irrigation district in the manner provided by "the California Irrigation District Act," and that upon the failure or refusal of the defendant Baxter Creek Irrigation District and its officers to make such provision, that the Board of Supervisors and other officers of the County of Lassen, State of California, make provision for the payment of said judgment by levying and collecting assessments against the lands in said district in the manner provided by "the California Irrigation District Act"; and

Whereas, it appears that certain lands within said district were omitted from the assessment heretofore levied to pay said judgment; and

Exhibit "D"—(Continued)

Whereas, it appears that on the 26th day of September, 1944 an Order was made by Martin I. Welsh, Judge of the United States District Court of the Northern District of California, Northern Division in the case of [23] Pueblo Trading Company vs. Baxter Creek Irrigation Co., No. 4195L ordering that the Board of Supervisors of Lassen County, California, the Assessor, Tax Collector and Treasurer and other officers of said county, prepare forthwith a supplemental assessment roll of the lands omitted from the assessment roll heretofore prepared by said Board of Supervisors and officers and that said officers should proceed to levy and assess said lands for the payment of the judgment heretofore rendered in the above entitled action; and

Whereas, it appears that the land described in Exhibit A, hereto attached and incorporated in and made a part of this Resolution, and included within the aforementioned Order is not within the boundaries of the Baxter Creek Irrigation District; and

Whereas, it appears that the land described in the aforementioned Order, which is legally within said district is included in the lands hereinafter described in Exhibit B, hereto attached and incorporated in and made a part of this Resolution, all of which land is subject to assessment to pay the aforementioned judgment and accrued bond interest and principal; and

Whereas, it appears that the following officers of the Baxter Creek Irrigation District, to-wit: Three Directors, constituting a Board of Directors,

Exhibit "D"—(Continued)

an Assessor, a Collector and a Treasurer, have been duly elected and that a Secretary has been appointed by said Board of Directors and that all of said officers have qualified and are now performing the duties imposed upon them by law and are governing the Baxter Creek Irrigation District, and that no duties to govern and regulate said district are now imposed, nor do they rest with the Board of Supervisors [24] and other officers of the County of Lassen, California, pursuant to Division 2, Part 10, Chapter 7, Sections 26500-26529 of the California Water Code; and

Whereas, it further appears that there is outstanding and unpaid, an indebtedness of \$1,169,157.53 due upon the principal and accrued interest coupons of bonds duly issued by the Baxter Creek Irrigation District, and which have not been paid and are past due, and that the sum of \$1,169,157.53 is necessary to be raised for the payment thereof, and a levy should be made upon the lands described in Exhibit B, all of which are subject to assessment.

Now, therefore, be it resolved that the assessor of the aforementioned district shall forthwith prepare an assessment roll as to the lands described in Exhibit B hereto attached, and shall ascertain the aggregate assessed value of the said property exclusive of improvements and shall deduct 15% for anticipated delinquency as provided in Section 25801 of the California Water Code and shall ascertain the net assessed valuation of the aforementioned property.

Exhibit "D"—(Continued)

And, it is hereby further determined and resolved that the sum of \$47,022.47 is sufficient and necessary to be raised by assessment to pay the aforementioned judgment with accrued interest, and that the said sum be levied upon the aforementioned land described in Exhibit B based upon the equalized net assessed value for the purpose of paying the said judgment.

And, it is hereby further determined and resolved that the sum of \$1,169,157.53 is sufficient and necessary to be raised by assessment to pay the aforementioned accrued bond interest and principal, and that the said sum be levied upon the aforementioned lands described in Exhibit B [25] based upon the equalized net assessed value of said lands for the purpose of paying the said bond interest and principal indebtedness.

Be it further resolved that the Secretary, Collector and Treasurer of said Baxter Creek Irrigation District shall perform the duties required of them for the levying and collection of the assessment to pay the aforementioned judgment and the accrued bond interest and principal indebtedness of said district as provided in the California Water Code.

EXHIBIT A

Frac. NE $\frac{1}{4}$ of SE $\frac{1}{4}$: Sec. 23, Twp. 28 N., Range 13 E.—(18 acres).

Frac. NE $\frac{1}{4}$ of SE $\frac{1}{4}$: Sec. 23, Twp. 28 N., Range 13 E.—(19 acres).

N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NE $\frac{1}{4}$: N $\frac{1}{2}$ of S $\frac{1}{2}$ of NW $\frac{1}{4}$: Sec. 1, Twp. 28 N., Range 13 E.—(60 acres).

Exhibit "D"—(Continued)

$N\frac{1}{2}$ of $SE\frac{1}{4}$ of $NE\frac{1}{4}$: Sec. 2, Twp. 28 N., Range 13 E.—(20 acres).

$SW\frac{1}{4}$ of $SE\frac{1}{4}$ of $NE\frac{1}{4}$: Sec. 2, Twp. 28 N., Range 13 E.—(10 acres).

Frac. $SE\frac{1}{4}$ of $SE\frac{1}{4}$: Sec. 25, Twp. 28 N., Range 13 E.—(8 acres).

Frac. $W\frac{1}{2}$ of $NE\frac{1}{4}$, Frac. $NW\frac{1}{4}$ of $SE\frac{1}{4}$: Frac. $NE\frac{1}{4}$ of $SW\frac{1}{4}$: Sec. 23, Twp. 28 N., Range 13 E.—(100 acres).

$W\frac{1}{2}$ of $NW\frac{1}{4}$, $SE\frac{1}{4}$ of $NW\frac{1}{4}$, Frac. $NE\frac{1}{4}$ of $NW\frac{1}{4}$, $SW\frac{1}{4}$, Lots 1 and 2, $SW\frac{1}{4}$ of $NE\frac{1}{4}$, $NW\frac{1}{4}$ of SEP, Lot 3, Frac. $S\frac{1}{2}$ of SEP: Sec. 25, Twp. 28 N., Range 13E.

$E\frac{1}{2}$ of $NW\frac{1}{4}$, $W\frac{1}{2}$ of $NE\frac{1}{4}$: Sec. 36, Twp. w8 N., Range 13 E.—(693.58 acres).

Frac. SEP: Sec. 23, Twp. 28 N., Range 13 E.—(22 acres).

$N\frac{1}{2}$ of $SW\frac{1}{4}$ of $NW\frac{1}{4}$: Sec. 27, Twp. 29 N., Range 13 E.—(20 acres).

EXHIBIT B

$N\frac{1}{2}$ of $SE\frac{1}{4}$: Sec. 20, Twp. 29 N., Range 13 E.—(80 acres).

$SW\frac{1}{4}$ of $SE\frac{1}{4}$: Sec. 3, Twp. 28 N., Range 13 E.—(40 acres).

$NE\frac{1}{4}$ of $SW\frac{1}{4}$, $N\frac{1}{2}$ of $NW\frac{1}{4}$: Sec. 3, Twp. 28 N., Range 13 E. * (40 acres).

$S\frac{1}{2}$ of $SW\frac{1}{4}$: Sec. 34, Twp. 29 N., Range 13 E.

$NW\frac{1}{4}$ of $NW\frac{1}{4}$: Sec. 3, Twp. 29 N., Range 13 E.

$NE\frac{1}{4}$ of $NE\frac{1}{4}$: Sec. 4, Twp. 28 N., Range 13 E.—(163 acres).

Exhibit "D"—(Continued)

NE $\frac{1}{4}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$: Sec. 4, Twp. 28 N., Range 14 E.—(280 acres).

N $\frac{1}{2}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$; Sec. 15, Twp. 28 N., Range 13 E.—(120 acres).

SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Frac. NE $\frac{1}{4}$ of SW $\frac{1}{4}$: Sec. 14, Twp. 28 N., Range 13 E.—(105 acres).

N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$: Sec. 10, Twp. 28 N., Range 13 E.—(60 acres).

S $\frac{1}{2}$ of NW $\frac{1}{4}$ of SE $\frac{1}{4}$: Sec. 10, Twp. 28 N., Range 13 E.—(20 acres).

Frac. NW $\frac{1}{4}$ of NE $\frac{1}{4}$ (north of highway): Sec. 15, Twp. 28 N., Range 13 E.—(30 acres).

NW $\frac{1}{4}$ of SW $\frac{1}{4}$: Sec. 10, Twp. 28 N., Range 13 E.

SW $\frac{1}{4}$ of NW $\frac{1}{4}$: Sec. 10, Twp. 28 N., Range 13 E.—(80 acres).

SE $\frac{1}{4}$ of SW $\frac{1}{4}$: Sec. 4, Twp. 28 N., Range 14 E.—(40 acres).

W $\frac{1}{2}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$: Sec. 9, Twp. 28 N., Range 14 E.—(120 acres).

E $\frac{1}{2}$ of SW*: Sec. 10, Twp. 28 N., Range 13 E.

Frac. NE $\frac{1}{4}$ of NW $\frac{1}{4}$: Sec. 15, Twp. 28 N., Range 13 E.—(92 acres).

S $\frac{1}{2}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$: Sec. 2, Twp. 28 N., Range 13 E.—(20 acres).

S $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$: Sec. 3, Twp. 28 N., Range 13 E.—(5 acres).

Frac. NE $\frac{1}{4}$ of NW $\frac{1}{4}$: Sec. 15, Twp. 28 N., Range 13 E.—(28 acres).

S $\frac{1}{2}$ of NE $\frac{1}{4}$: W $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$: Sec. 15, Twp. 28 N., Range 13 E.—(100 acres).

Exhibit "D"—(Continued)

Portion of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ South of the State Highway: Sec. 15, Twp. 28 N., Range 13 E.—(10 acres). [28]

EXHIBIT "E"

In the District Court of the United States for the
Northern District of California,
Northern Division

No. 4195-L

PUEBLO TRADING CO.,

Plaintiff,

vs.

BAXTER CREEK IRRIGATION DISTRICT,
Defendant.

RETURN ON ORDER TO SHOW CAUSE

Pursuant to an oral agreement made in open Court in this case, the Board of Supervisors of Lassen County on the 14th day of September, 1943, enacted a resolution, copy of which is attached, authorizing and directing Mr. F. O. Wemple, the Assessor of Lassen County, California, to prepare an assessment roll of the land of the Baxter Creek Irrigation District. The County Assessor of Lassen County has now prepared an assessment roll on the land of said District, based on the assessment roll of the County of Lassen, State of California, which said assessment roll is in an amount sufficient to take care of the outstanding indebtedness of the Baxter Creek Irriga-

tion District, including the judgment herein entered.

The County Assessor has now prepared the assessment roll, and the Board of Supervisors of Lassen County have set December 13th, 1943, as the date upon which they will sit as a Board of Equalization to equalize said roll prepared by said County Assessor.

That the officers in Lassen County, and each of them, have each and all of them done all acts required of them in [29] connection with said Irrigation District, in accordance with the terms and provisions of the California Irrigation Distict Act, and therefore pray that an order be made by this Court dismissing the Order to Show Cause, issued by said Court on the 20th day of July, 1943.

ARTHUR J. ANDERSON,
District Attorney for the County of Lassen, State
of California.

[Endorsed]: Filed June 5, 1947.

[30]

[Title of District Court and Cause.]

AMENDMENT TO AGREED STATEMENT OF
FACTS RE PETITION OF STATE OF
CALIFORNIA FOR ORDER EXCLUDING
CERTAIN LAND FROM PLAN OF COM-
POSITION AND INTERLOCUTORY DE-
CREE APPROVING SAID PLAN.

It Is Hereby Stipulated by and between the parties hereto that the following shall be added to the Agreed Statement of Facts heretofore filed in amendment of Paragraph 17 as follows:

17-A. A copy of the notice referred to in paragraph 17 above is hereunto annexed and marked Exhibit "F" and made a part hereof by this reference.

Dated June 6, 1947.

STATE OF CALIFORNIA,

By /s/ THOMAS W. MARTIN,
Attorney.

W. COBURN COOK,
Trustee.

By W. COBURN COOK,
BAXTER CREEK IRRIGA-
TION DISTRICT,

By /s/ FRANKLIN A. DILL,
Attorney.

EXHIBIT "F"

DELINQUENT TAX LIST

County of Lassen, State of California

Tule Irrigation District and Baxter Creek
Irrigation District

Levied in the year 1944

Notice is hereby given that unless the total amount due for the year 1944 for assessments, penalties and costs on any property, as shown on the list below opposite the description of the property, is paid before 10:00 a.m., May 21, 1945, the real property on which such amounts are a lien will by operation of law be sold to the Irrigation District in which the property is located, at such time in the office of the Tax Collector at the courthouse in the City of Susanville, County of Lassen.

C. D. MATHEWS,

Tax Collector of Tule Irrigation District and Baxter
Creek Irrigation District.

Dated April 26, 1945.

Note—All Townships North. All Ranges East. Mount Diablo
Base and Meridian.

Abbreviations Used:

Sec. Section
T. Township
R. Range

TULE IRRIGATION DISTRICT

Mahle, Leland, A., et al.—Commencing at SW corner
of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 22, T. 29, R. 14 and run-
ning N. $\frac{1}{8}$ mi. E. $\frac{1}{32}$ Mile, S. $\frac{1}{8}$ mi. and W.
 $\frac{1}{32}$ mile to place of beginning\$459,162.80

36 *Baxter Creek Irrigation District, et al.*

Mapes, James W.—E $\frac{1}{2}$ of SW $\frac{1}{4}$, W $\frac{1}{2}$ of SE $\frac{1}{4}$ Sec.	
19. T. 29, R. 16.....	734,660.30
Loiselle, Leroy—SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of SW $\frac{1}{4}$, N $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 6, T. 29, R. 14	51,018.10
Bass, Grover C.—SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 11, T. 29, R. 15..	183,665.10
Wyatt, Ralph M., and Geo. Wyatt—NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 9, T. 29, R. 14.....	489,773.70

BAXTER CREEK IRRIGATION DISTRICT

Bailey, Lenora—Frac. NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 23, T. 28 R. 13	\$ 18,493.69
Bailey, Lenora M.—Frac. NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 23, T. 28, R. 13	19,374.34
Buffum, Frank B.—N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 20, T. 29, R. 13	110,962.18
California Lands, Inc.—SW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$ N $\frac{1}{2}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 3, T. 28, R. 13	42,711.61
Chaffin, Emma—S $\frac{1}{2}$ of SW $\frac{1}{4}$ Sec. 34, T. 29, R. 13, NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 3, T. 29, R. 13, NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 4, T. 28, R. 13.....	77,057.04
Clark, H. J., and Lurley—N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NE $\frac{1}{4}$ N $\frac{1}{2}$ of S $\frac{1}{2}$ of NW $\frac{1}{4}$ Sec. 1, T. 28, R. 13 N $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 2, T. 28, R. 13	17,613.04
Dakin, Bros.—NE $\frac{1}{4}$, N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 4 T. 28 R. 14.....	52,839.12
Dieter, F. W.—N $\frac{1}{2}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 15 T. 28, R. 13.....	23,777.60
Dieter, F. W., and Bertha—SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$, Frac. NE $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 14, T. 28 R. 13	19,814.67
Dieter, Noel and Donna—N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$, S $\frac{1}{2}$ of NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 10, T. 28, R. 13, Frac. NW $\frac{1}{4}$ of NE $\frac{1}{4}$ (North of Highway) Sec. 15, T. 28, R. 13.....	21,575.97
Dimke, F. J.—NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 10-28, R. 13	79,258.67
Dunn, Edmund and Genevieve—SE $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 4, T. 28, R. 14.....	7,925.86
Farrell, James M. and Amy—Frac. SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 25, T. 28, R. 13.....	7,925.86

Fox, Carl—W $\frac{1}{2}$ of NW $\frac{1}{4}$, NE $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 9, T. 28, R. 14	46,234.22
Gasperoni, Orlando and Victoria—E $\frac{1}{2}$ of SW $\frac{1}{4}$ Sec. 10, Frac. NE $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 15, T. 28, R. 13.....	57,682.68
McCallister, R. F., et al.—S $\frac{1}{2}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 2 S $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 3. T. 28, R. 13	8,806.51
McRorey, Geo. and Rachel—Frac. W $\frac{1}{2}$ of NE $\frac{1}{4}$ Frac. NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Frac. NE $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 23, T. 28, R. 13	84,102.24
Otto, Richard Vaux and Lillian M.—Frac. NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 15, T. 28, R. 13.....	5,724.23
Parker Estate—S $\frac{1}{2}$ of NE $\frac{1}{4}$, W $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec. 15, T. 28, R. 13.....	59,003.68
Riedel, Bruno—Portion of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ South of the State Highway, Sec. 15, T. 28, R. 13.....	2,201.63
Stiles, May Florence—W $\frac{1}{2}$ of NW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, Frac. NE $\frac{1}{4}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ Lots 1 and 2, SW $\frac{1}{4}$ of NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec. 25, T. 28, R. 13, E $\frac{1}{2}$ of NW $\frac{1}{4}$, W $\frac{1}{2}$ of NE $\frac{1}{4}$ Sec. 36, T. 28, R. 13..	432,339.84
Uruburu, Jose—N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec. 27, T. 29, R. 13	6,164.56
Zeitler, Lyal and Cathleen—Frac. SE $\frac{1}{4}$ Sec. 23, T. 28, R. 13	14,530.76

4:26 5:3-10

[Endorsed]: Filed Nov. 24, 1947. [33]

[Title of District Court and Cause.]

SECOND AMENDMENT TO AGREED STATEMENT OF FACTS RE PETITION OF STATE OF CALIFORNIA FOR ORDER EXCLUDING CERTAIN LAND FROM THE PLAN OF COMPOSITION AND INTERLOCUTORY DECREE APPROVING SAID PLAN.

It Is Hereby Stipulated by and between the parties hereto that the following shall be added

to the Agreed Statement of Facts heretofore filed in amendment of Paragraph 16 as follows:

16-A. That the Board of Directors of Baxter Creek Irrigation District on July 2, 1946 passed a Resolution, a copy of which Resolution is hereunto attached, marked Exhibit "G" and made a part hereof by this reference.

16-B. That the Board of Directors of Baxter Creek Irrigation District on September 2, 1947 ordered the Resolution corrected to read in the form attached hereto marked Exhibit "H" and made a part hereof by this reference.

Dated October 15th, 1947.

STATE OF CALIFORNIA,

By THOMAS W. MARTIN,
Attorney.

W. COBURN COOK,
Trustee.

By W. COBURN COOK,
Attorney.

BAXTER GREEK IRRIGA-
TION DISTRICT,

By FRANKLIN A. DILL,
Attorney.

[Endorsed]: Filed Nov. 24, 1947.

[34]

EXHIBIT "G"

RESOLUTION

Whereas, the United States District Court for the State of California in its Order No. 4195-L issued at Sacramento, California, on the 27th day of August, 1945, and October 9, 1945, did exclude the lands of the following named and numbered individuals from the Baxter Creek Irrigation District:

- 1 Lenora Bailey
- 2 Lenora M. Bailey
- 6 H. J. Clark and Lurley Clark
- 13 James L. and Amy Farrell
- 17 George and Rachel McRorey
- 21 Lyman Dermott Stiles
- 23. Loyal and Cathleen Zeitler

Whereas, because of said exclusion it is apparent that these lands should not have been included in the 1945 district assessment roll prepared for the purpose of levying assessments against said property for the payment of district indebtedness, and

Whereas, it is necessary because of said Order No. 4195-L issued by the United States District Court for the State of California that the assessments levied by the District on May 21, 1945, be canceled,

Now, Therefore, Be It Resolved that the above mentioned lands have been erroneously assessed and the Secretary is hereby authorized and directed to cancel all assessments appearing on the

District assessment roll against said lands prepared on May 21, 1945.

The above resolution was introduced at a regular meeting of the Board of Directors held July 2, 1946, by Carl Fox, who moved that it be adopted. The motion was seconded by H. J. Clark and the resolution was adopted by the following vote:

Ayes: H. J. Clark, Carl Fox.

Noes: None.

Absent: Fred Dieter.

The majority of votes being favorable the resolution was declared adopted and it was so ordered.

H. J. CLARK,
Chairman.

[35]

EXHIBIT "H"

RESOLUTION TAKEN FROM MINUTES OF BAXTER CREEK IRRIGATION DISTRICT

July 2, 1946

Whereas, the United States District Court for the State of California in its order No. 4195-L issued at Sacramento, California, on the 27th day of August, 1945, and October 9, 1945, did exclude the lands of the following named and numbered individuals from the Baxter Creek Irrigation District:

1. Lenora Bailey
2. Lenora M. Bailey
6. H. J. Clark and Lurley Clark
13. James L. and Amy Farrell
17. George and Rachel McRorey
21. Lyman Dermott Stiles
23. Loyal and Cathleen Zeitler

Whereas, because of said exclusion it is apparent that these lands should not have been included in the 1944 district assessment roll prepared for the purpose of levying assessments against said property for the payment of district indebtedness, and

Whereas, it is necessary because of said Order No. 4195-L, issued by the United States District Court for the State of California, that the assessments levied by the District in 1944, be cancelled.

Now Therefore Be It Resolved that the above mentioned lands have been erroneously assessed and the Secretary is hereby authorized and directed to cancel all assessments appearing on the District assessment roll against said lands for the year 1944.

The above resolution was introduced at a regular meeting of the Board of Directors held July 2, 1946, by Carl Fox, who moved that it be adopted. The motion was seconded by H. J. Clark and the resolution was adopted by the following vote:

Ayes: H. J. Clark, Carl Fox.

Noes: None.

Absent: Fred Dieter.

The majority of votes being favorable, the resolution was declared adopted and was so ordered.

H. J. CLARK,

Chairman.

PAUL J. HOPPER,

Secretary.

[36]

I, H. J. Clark, and I, Paul J. Hopper, President and Secretary respectively of the Board of Directors of the Baxter Creek Irrigation District, do, each of us, hereby certify that the attached is a full, true and correct copy of a Resolution adopted by the said Board of Directors on the Second day of July, 1946.

Witness our hands and the seal of the Baxter Creek Irrigation District this Second day of September, 1947.

H. J. CLARK,

President.

PAUL J. HOPPER,

Secretary.

[37]

Plat	Owner	All M.D.B.&M. Description	Acre	Amount	Bal. Exp. Assess.	Total Amount
79	Grant, Ben	NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 24, Twp. 29 N., Range 13 E.	40	\$ 220.00	\$ 3.77	\$ 223.77
80	Winchell, F. K.	NE $\frac{1}{4}$ of SW $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 7, Twp. 28 N., Range 14 E.	80	440.00	440.00
81	Wright, Martin E.	N $\frac{1}{2}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 11; NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 14, Twp. 29, Range 13 E.	100	550.00	16.17	566.17
82	Zangger, Edward	NE $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 14; S $\frac{1}{2}$ of NE $\frac{1}{4}$ of SW $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, E $\frac{1}{2}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$, and S $\frac{1}{2}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 11; NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 15; SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$, S $\frac{1}{2}$ of SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 10, Twp. 29, Range 13 E.	230	965.00	965.00
Supplement to Baxter Creek Irrigation District						
3	Buttum, Frank B.	Included in No. 12 of original roll.				
4	California Lands, Inc. c/o Chas. Degiovanni	SW $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, N $\frac{1}{2}$ of NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 3, Twp. 28 N., Range 13 E.	100	550.00	16.17	566.17

Plat No.	Owner	All M.D.B.&M. Description	Acres	Amount	Bal. Exp. Assess.	Total Amount
5	Hall, Lohrun C. and Reba A.	S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 34, Twp. 29 N., Range 13 E.; NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 3, Twp. 28 N., Range 13 E., NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 4, Twp. 28 N., Range 13 E.	163	507.50	14.92	522.42
7	Fish and Game Commission, State of California	NE $\frac{1}{4}$ N $\frac{1}{2}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 4, Twp. 28 N., Range 14 E.	280	860.00	25.28	885.28
8	Dieter, F. W.	Included in No. 26 of original roll.				
9	Dieter, F. W. and Bertha	SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 14, Twp. 28 N., Range 13 E. Fractional of the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 14, Twp. 28 N., Range 13 E., lying southwesterly of the State Highway.	105	397.50	5.39	402.89
10	Dieter, Noel and Donna T.	Included in No. 31 of original roll.				
11	Dimke, F. J.	NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 10, Twp. 28 N., Range 13 E. Included in No. 33 of original roll.	80	1117.50	32.80	1150.35
12	Dunn, Edmond and Genevieve					
14	Fox, Carl	Included in No. 36 of original roll.				

In the District Court of the United States for the
Northern District of California,
Northern Division

No. 10750

In the Matter of BAXTER CREEK IRRIGA-
TION DISTRICT,

Bankrupt.

MEMORANDUM AND ORDER

Petition was filed on behalf of the State of California to exclude from the operation of the plan of composition as set forth in the Interlocutory Decree of January 3, 1946 herein certain described real property and to have the assessment levied pursuant thereto declared null and void. By the decree the State of California through the Fish and Game Commission was assessed the sum of \$885.28.

The State of California now contends that it had acquired title before the assessment created a lien upon its land and that being state land devoted to a public use it was exempt from the assessment.

According to the agreed statement of facts deed to the land in question was accepted by the Director of Finance of the State of California on August 28, 1944 and the deed recorded November 14, 1944 and re-recorded December 4, 1944.

January 2, 1945 the Board of Supervisors met and approved a supplemental assessment roll which included the land owned by the State of Califor-

nia, and on February 6, 1945 the Directors of Baxter Creek Irrigation District levied the assessment herein complained of. [39]

The Trustee in seeking to enforce payment of the sum assessed argues that since Section 25925 of the Water Code of the State of California creates a lien as of the first Monday of March of the year of an assessment and as the assessment herein was for the year 1944 the lien therefore should relate back and be effective as of the first Monday in March, 1944, which would be prior to the date the State of California obtained the land; a fortiori, the state would take subject to the lien.

Section 25925 states "The annual district assessment upon land is a lien against the property assessed from and after the first Monday in March of the year in which the assessment is levied." The language of the section clearly states that a lien could arise only if there is an assessment attaching in the year in which it was ordered. The term "year" should be given its common and usual definition of a calendar year, unless something to the contrary is specifically shown. Throughout the Water Code references made to a "calendar year" are persuasive in construing the word "year" to be other than a "fiscal year" as contended for by the Trustee.

The levy of the assessment having been made February 6, 1945 the lien would be effective as of the first Monday in March of 1945. The assessment coming after the State of California had acquired title, the lien likewise attached after the

acquisition and the State of California would not be liable for the assessment if the land is being used for a public purpose, La Mesa etc. Irrigation Distict v. Hornbeck, 216 Cal. 230; Conley v. Hawley 2 Cal. 2d 23. Lands purchased by the Fish and Game Commission under state [40] authority to be used in the carrying out of the functions of the Commission are lands impressed with a public purpose.

It is hereby ordered that the petition of the State of California be granted, that the land owned by it is excluded from the effect of the Interlocutory Decree of January 3, 1946, and the February 6, 1945 assessment levied thereon is declared to be null and void.

Dated July 9th, 1948.

DAL M. LEMMON,
United States District Judge.

Entered in Civil Docket July 9, 1948.

[Endorsed]: Filed July 9, 1948.

[41]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF MEMORANDUM
AND ORDER

To Baxter Creek Irrigation District and its attorney, Franklin A. Dill, and W. Coburn Cook, Trustee:

You, and each of you will please take notice that the above entitled court has entered and filed its Memorandum and Order granting the Petition of the State of California in the above entitled matter; that said Memorandum and Order was entered and filed on July 9th, 1948.

Dated this 22nd day of July, 1948.

FRED N. HOWSER,
Attorney General of State of
California.

E. G. BENARD,
Deputy Attorney General.

THOMAS W. MARTIN,
Special Counsel.
Attorneys for State of
California.

By THOMAS W. MARTIN.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed July 23, 1948. [42]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Baxter Creek Irrigation District and W. Coburn Cook, Trustee for the Creditors of Baxter Creek Irrigation District, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the Memorandum and Order dated July 9, 1948, and from the whole thereof.

Dated: July 30, 1948.

W. COBURN COOK,
Attorney for Appellants.

[Endorsed]: Filed Aug. 19, 1948. [44]

[Title of District Court and Cause.]

STATEMENT OF POINTS AND
ASSIGNMENT OF ERRORS ON APPEAL

The Appellants, Baxter Creek Irrigation District and W. Coburn Cook, Trustee for the creditors of Baxter Creek Irrigation District, make the following assignment of errors which they aver occurred in the determination of this proceeding and in the rendering of the decree appealed from, and state that the points on which they intend to rely on the appeal of this cause are the following:

1. The Court erred in construing and holding the word "year" in Section 25925 of the Water Code of the State of California to mean the calendar year in which the assessment is ordered or levied.

2. The Court erred in holding the lien assessment levied February 6, 1945, became effective the first Monday in March, 1945.

3. In any event the assessment was validated by statute as an assessment of the year 1944.

4. The application was barred by the statute of limitations.

5. The Court erred in holding that lands acquired [45] for the Fish and Game Commission of the State of California are necessarily or in this instance acquired for a public purpose and as such exempt from assessment thereafter for payment of the bond debt of the district.

6. The Court erred in finding and holding that the Court by decree ever assessed the lands of the Commission in the sum of \$885.28 or any other sum or that the assessment levied by the Baxter Creek Irrigation District was in any sum less than \$52,000.

7. The Court erred in finding or holding that the Trustee seeks in these proceedings to enforce payment of the sum of \$885.28, which was the redemption figure mentioned in the Interlocutory Decree herein.

8. The Court was without jurisdiction to declare null and void the assessment of February 6, 1945, and its order in that respect was an interference with the sovereignty of the State of California.

9. The Court erred in excluding the lands of the Commission from the plan of composition.

10. The terms of the Interlocutory Decree and

all issues herein determined by the Court are res judicata.

11. The order of the Court constitutes a taking of the creditors' property without due process and without just compensation.

Dated: August 24, 1948.

W. COBURN COOK,
Attorney for Appellants.

[Endorsed]: Filed Aug. 25, 1948. [46]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Appellants Baxter Creek Irrigation District and W. Coburn Cook, Trustee for the creditors of Baxter Creek Irrigation District, designate the following as those parts of the record as necessary for the consideration of the points on which appellants intend to rely on this appeal and for printing, to-wit:

1. Transcript of Record on Appeal in case No. 11632, United States Circuit Court of Appeals for the Ninth Circuit, W. Coburn Cook, as Trustee, Appellant, vs. Baxter Creek Irrigation District and the Landowners, H. J. Clark, Lurley Clark, Lenora M. Bailey, Lyal Zeitler, George McRorey, Rachel McRorey, Mr. and Mrs. E. A. Blickenstaff and James N. Farrell and Amy L. Farrell, appellees.

2. Order to Show Cause filed Jan. 13, 1947, Petition for Order to Show Cause dated January

10th, 1946, Affidavit in Support of Petition for Order to Show Cause, dated January 10th, 1947.

3. Affidavit of W. Coburn Cook, Trustee, Showing Cause, dated February 27, 1947. [47]

4. Agreed Statement of Facts re Petition of State of California for Order Excluding Certain Land from Plan of Composition and Interlocutory Decree Approving said plan, together with Exhibits A, B, C, D, and E.

5. Amendment to Agreed Statement of Facts re Petition of State of California for order excluding certain land from plan of composition and interlocutory decree approving said plan, dated June 6, 1947, together with Exhibit F.

6. Second Amendment to Agreed Statement of Facts re Petition of State of California for Order Excluding Certain Land from the Plan of Composition and Interlocutory Decree Approving said Plan, together with Exhibit G.

7. Memorandum and Order, dated July 9, 1948.

8. Notice of Entry of Memorandum and Order, dated July 22, 1948.

9. Notice of Appeal.

10. Statement of Points and Assignment on Appeal.

11. This Designation of Contents of Record on Appeal.

Dated: August 24, 1948.

W. COBURN COOK,
Attorney for Appellants.

[Endorsed]: Filed Aug. 25, 1948. [48]

[Title of District Court and Cause.]

APPELLEE'S DESIGNATION OF ADDI-
TIONAL PORTIONS OF RECORD
ON APPEAL

Appellee State of California hereby designates the following additional portions of the record which appellee desires to have included in the record on appeal:

1. Exhibit H attached to Second Amendment to agreed statement of facts, re Petition of State of California for Order Excluding Certain Land from the Plan of Composition and Interlocutory Decree Approving said plan.

2. Page 8 of Schedule B attached to the Plan of Composition, being Agreement of August 28, 1945, between W. Coburn Cook and the Baxter Creek Irrigation District.

3. This Designation of Additional Contents of Record on Appeal.

Dated: September 4, 1948.

/s/ THOMAS W. MARTIN,
Attorney for Appellee.

[Endorsed]: Filed Sept. 4, 1948. [49]

(Affidavit of Service attached.)

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 49 pages, numbered from 1 to 49, inclusive, contain a

full, true and correct transcript of certain records and proceedings in the matter of the Baxter Creek Irrigation District, No. 10750, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation and Counter-designation of Portions of the Record to be contained in the Record on Appeal, copies of which are embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Six and 50/100 (\$6.50) dollars, and that the same has been paid to me by the attorney for the appellants herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 9th day of September, A.D. 1948.

(Seal)

C. W. CALBREATH,
Clerk.

[Endorsed]: No. 12032. United States Court of Appeals for the Ninth Circuit. Baxter Creek Irrigation District and W. Coburn Cook, Trustee for the Creditors of Baxter Creek Irrigation District, Appellants, vs. State of California, Fish and Game Commission of the State of California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed September 11, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

ff United States Circuit Court of Appeals
for the Ninth Circuit

No. 12032

BAXTER CREEK IRRIGATION DISTRICT,
and W. COBURN COOK, Trustee for the
Creditors of Baxter Creek Irrigation District,
Appellants,

vs.

FISH AND GAME COMMISSION OF THE
STATE OF CALIFORNIA, and STATE OF
CALIFORNIA,

Appellees.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY
ON APPEAL

The appellants adopt as the points on appeal on which they intend to rely, the Statement of Points designated and filed in the United States District Court.

Dated: September 15, 1948.

/s/ W. COBURN COOK,
Attorney for Appellants.

(Affidavit of Service attached.)

[Endorsed]: Filed Sept. 17, 1948. Paul P.
O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL AND FOR PRINTING

The appellants designate as those parts of the record as necessary for the consideration of the points upon which the appellants intend to rely in this appeal and for printing the following:

1. The entire transcript of record on appeal herein except the transcript of record on appeal in the case of W. Coburn Cook as Trustee, Appellant, vs. Baxter Creek Irrigation District, et al., appellees, No. 11632 in the United States Circuit Court of Appeal for the Ninth Circuit.

2. Statement of Points and Designation of Record for Printing in the United States Circuit Court of Appeal.

Dated: September 15, 1948.

/s/ W. COBURN COOK,
Attorney for Appellants.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed September 17, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION

It is stipulated between appellants and appellees that the record on appeal in the case of Cook v. Baxter Creek Irrigation District, No. 11632, being a part of the record on appeal herein need not be printed but in lieu of printing three copies thereof shall be made available to the Court.

Dated: September 21, 1948.

/s/ W. COBURN COOK,
Attorney for Appellants.

/s/ THOMAS W. MARTIN,
Attorney for Appellees.

[Endorsed]: Filed September 29, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

MOTION

Appellants move the court for an order providing that that part of the Transcript of Record on Appeal herein which consists of Transcript of Record on Appeal in case No. 11632, United States Circuit Court of Appeals for the Ninth Circuit, W. Coburn Cook, as Trustee, Appellant, vs. Baxter Creek Irrigation District and the Landowners, H. J. Clark, Lurley Clark, Leonora M. Bailey, Lyal Zeitler, George McRorey, Rachel McRorey, Mr. and Mrs. E. A. Blickenstaff and James N. Farrell

and Amy L. Farrell, appellees, need not be re-printed but that in lieu of printing three copies thereof be made available to the court out of its files or from other sources.

Dated: September 15, 1948.

/s/ W. COBURN COOK,
Attorney for Appellants.

It is so ordered.

Dated: September 28, 1948.

/s/ CLIFTON MATHEWS,
Judge, U. S. Court of Appeals
for the Ninth Circuit.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed September 29, 1948. Paul P. O'Brien, Clerk.